



Reprinted  
March 31, 2009

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## ENGROSSED SENATE BILL No. 181

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DIGEST OF SB 181 (Updated March 30, 2009 4:01 pm - DI 106)

**Citations Affected:** IC 16-41; IC 35-42; IC 35-50; noncode.

**Synopsis:** Child seduction and repeat sex offenders. Expands the group of persons who commit child seduction by adding persons employed by a charter school or special education cooperative and persons otherwise affiliated with a school corporation, charter school, nonpublic school, or special education cooperative if the person affiliated with the school or cooperative: (1) has a position of trust with respect to a child who attends the school or cooperative; (2) is engaged in the provision of care or supervision to a child who attends the school or cooperative; and (3) is at least four years older than the child. Provides that a military recruiter whose primary job is recruiting individuals to enlist with the armed forces commits child seduction if the military recruiter who is attempting to enlist a child at least 16 years old but less than 18 years: (1) engages in sexual intercourse with the child; (2) engages in deviate sexual conduct with the child; or (3) fondles the child. Provides that an attempted sex offense may be used to establish that a person is a repeat sex offender. Authorizes the release of certain medical or epidemiologic information of persons convicted of certain sex offenses.

**Effective:** July 1, 2009.

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**Lubbers, Steele, Delph, Broden,  
Zakas, Miller**

(HOUSE SPONSORS — PIERCE, BATTLES)

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January 7, 2009, read first time and referred to Committee on Judiciary.  
February 12, 2009, amended, reported favorably — Do Pass.  
February 17, 2009, read second time, ordered engrossed.  
February 18, 2009, engrossed.  
February 19, 2009, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Courts and Criminal Code.  
March 26, 2009, amended, reported — Do Pass.  
March 30, 2009, read second time, amended, ordered engrossed.

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ES 181—LS 6752/DI 106+



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March 31, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 181

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 16-41-8-1, AS AMENDED BY P.L.135-2005,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 1. (a) Except as provided in subsections (d) and  
4 (e), a person may not disclose or be compelled to disclose medical or  
5 epidemiological information involving a communicable disease or  
6 other disease that is a danger to health (as defined under rules adopted  
7 under IC 16-41-2-1). This information may not be released or made  
8 public upon subpoena or otherwise, except under the following  
9 circumstances:  
10 (1) Release may be made of medical or epidemiologic information  
11 for statistical purposes if done in a manner that does not identify  
12 an individual.  
13 (2) Release may be made of medical or epidemiologic information  
14 with the written consent of all individuals identified in the  
15 information released.  
16 (3) Release may be made of medical or epidemiologic information  
17 to the extent necessary to enforce public health laws, laws

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described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23, IC 35-38-1-7.1, ~~and~~ IC 35-42-1-7, **IC 35-42-4-1, IC 35-42-4-2, IC 35-42-4-3, IC 35-42-4-5, IC 35-42-4-7, IC 35-42-4-8, IC 35-42-4-9, IC 35-46-1-3, and IC 35-42-2-6**, or to protect the health or life of a named party.

(b) Except as provided in subsection (a), a person responsible for recording, reporting, or maintaining information required to be reported under IC 16-41-2 who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiologic information classified as confidential under this section commits a Class A misdemeanor.

(c) In addition to subsection (b), a public employee who violates this section is subject to discharge or other disciplinary action under the personnel rules of the agency that employs the employee.

(d) Release shall be made of the medical records concerning an individual to:

- (1) the individual;
- (2) a person authorized in writing by the individual to receive the medical records; or
- (3) a coroner under IC 36-2-14-21.

(e) An individual may voluntarily disclose information about the individual's communicable disease.

(f) The provisions of this section regarding confidentiality apply to information obtained under IC 16-41-1 through IC 16-41-16.

SECTION 2. IC 35-42-4-7, AS AMENDED BY P.L.1-2005, SECTION 228, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

**(c) As used in this section, "charter school" has the meaning set forth in IC 20-18-2-2.5.**

~~(c)~~ **(d)** As used in this section, "child care worker" means a person who:

- (1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility; ~~or~~
- (2) is employed by a:
  - (A) school corporation; ~~or~~
  - (B) charter school;**
  - ~~(B)~~ **(C) nonpublic school; or**
  - (D) special education cooperative;**

attended by a child who is the victim of a crime under this

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chapter; or

(3) is:

(A) affiliated with a:

- (i) school corporation;
- (ii) charter school;
- (iii) nonpublic school; or
- (iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

~~(d)~~ (e) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

~~(e)~~ (g) As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

~~(f)~~ (h) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(i) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

~~(g)~~ (j) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(h)~~ (k) If a person who: ~~is:~~

(1) is at least eighteen (18) years of age; and

(2) is:

(A) the:

- ~~(A)~~ (i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or
- ~~(B)~~ (ii) child care worker for; or

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(B) a military recruiter who is attempting to enlist;  
 a child at least sixteen (16) years of age but less than eighteen  
 (18) years of age;  
 engages with the child in sexual intercourse, deviate sexual conduct (as  
 defined in IC 35-41-1-9), or any fondling or touching with the intent to  
 arouse or satisfy the sexual desires of either the child or the adult, the  
 person commits child seduction, a Class D felony.

SECTION 3. IC 35-50-2-14, AS AMENDED BY P.L.173-2006,  
 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2009]: Sec. 14. (a) As used in this section, "sex offense"  
 means a felony conviction:

- (1) under IC 35-42-4-1 through IC 35-42-4-9 or under  
 IC 35-46-1-3;
- (2) for an attempt or conspiracy to commit an offense  
 described in subdivision (1); or
- (3) for an offense under the laws of another jurisdiction,  
 including a military court, that is substantially similar to an  
 offense described in subdivision (1).

~~(a)~~ (b) The state may seek to have a person sentenced as a repeat  
 sexual offender for a sex offense under ~~IC 35-42-4-1 through~~  
~~IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another  
 jurisdiction that is substantially similar to a sex offense under  
~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; subsection (a)(1)  
 or (a)(2) by alleging, on a page separate from the rest of the charging  
 instrument, that the person has accumulated one (1) prior unrelated  
 felony conviction for a sex offense under ~~IC 35-42-4-1 through~~  
~~IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another  
 jurisdiction that is substantially similar to a sex offense under  
~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; subsection (a).

~~(b)~~ (c) After a person has been convicted and sentenced for a felony  
 committed under subsection (a)(1) or (a)(2) after sentencing having  
 been sentenced for a prior unrelated felony conviction sex offense  
 under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an  
 offense committed in another jurisdiction that is substantially similar  
 to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or~~  
~~IC 35-46-1-3~~; subsection (a), the person has accumulated one (1) prior  
 unrelated felony sex offense conviction. However, a conviction does  
 not count for purposes of this subsection, if:

- (1) it has been set aside; or
- (2) it is ~~one~~ a conviction for which the person has been pardoned.

~~(c)~~ (d) If the person was convicted of the sex offense in a jury trial,  
 the jury shall reconvene to hear evidence in the enhancement hearing.

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1 If the trial was to the court, or the judgment was entered on a guilty  
2 plea, the court alone shall hear evidence in the enhancement hearing.

3 ~~(d)~~ (e) A person is a repeat sexual offender if the jury (if the hearing  
4 is by jury) or the court (if the hearing is to the court alone) finds that  
5 the state has proved beyond a reasonable doubt that the person had  
6 accumulated one (1) prior unrelated felony **sex offense** conviction.  
7 ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or had~~  
8 ~~accumulated one (1) prior unrelated conviction for an offense~~  
9 ~~committed in another jurisdiction that is substantially similar to a sex~~  
10 ~~offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~

11 ~~(e)~~ (f) The court may sentence a person found to be a repeat sexual  
12 offender to an additional fixed term that is the advisory sentence for the  
13 underlying offense. However, the additional sentence may not exceed  
14 ten (10) years.

15 SECTION 4. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and**  
16 **IC 35-50-2-14, both as amended by this act, apply only to crimes**  
17 **committed after June 30, 2009.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 181, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 9, delete "and".

Page 2, line 10, delete "with the school in which the person has" and insert **"of trust in relation to a child who attends the school;**

**(C) engaged in the provision of care or supervision to a child who attends the school; and**

**(D) at least four (4) years older than the child who is the victim of a crime under this chapter."**

Page 2, delete lines 11 through 12.

Page 2, between lines 15 and 16, begin a new paragraph and insert:

**"(f) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard."**

Page 2, line 16, delete "(f)" and insert **"(g)"**.

Page 2, line 18, delete "(g)" and insert **"(h)"**.

Page 2, line 20, delete "(h)" and insert **"(i)"**.

Page 2, line 23, delete "(i)" and insert **"(j)"**.

Page 2, line 23, after "who" insert ":".

Page 2, line 23, strike "is:".

Page 2, line 24, after "(1)" insert **"is"**.

Page 2, line 25, after "(2)" insert **"is:**

**(A)"**.

Page 2, line 26, beginning with "(A)" begin a new line triple block indented.

Page 2, line 26, strike "(A)" and insert **"(i)"**.

Page 2, line 28, beginning with "(B)" begin a new line triple block indented.

Page 2, line 28, strike "(B)" and insert **"(ii)"**.

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Page 2, line 28, after "for;" insert "**or**

**(B) a military recruiter who is attempting to enlist;**".

and when so amended that said bill do pass.

(Reference is to SB 181 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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### COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 181, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, after "corporation;" insert "**or**".

Page 1, line 15, delete "or".

Page 1, line 16, after "school;" insert "**or**

**(D) special education cooperative;**".

Page 2, line 5, delete "or".

Page 2, line 6, after "school;" insert "**or**

**(iv) special education cooperative;**".

Page 2, line 11, delete ";" and insert "**or cooperative;**".

Page 2, line 13, delete ";" and insert "**or cooperative;**".

Page 2, line 16, delete "." and insert "**or cooperative.**".

Page 2, between lines 28 and 29, begin a new paragraph and insert:

**"(i) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1."**

Page 2, line 29, delete "(i)" and insert "**(j)**".

Page 2, line 32, delete "(j)" and insert "**(k)**".

Page 3, delete lines 4 through 6, begin a new paragraph and insert:

**"SECTION 2. IC 35-50-2-14, AS AMENDED BY P.L.173-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) As used in this section, "sex offense" means a felony conviction:**

**(1) under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;**

**(2) for an attempt or conspiracy to commit an offense described in subdivision (1); or**

**(3) for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an**

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**offense described in subdivision (1).**

~~(a)~~ **(b)** The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **subsection (a)(1) or (a)(2)** by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~. **subsection (a).**

~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony committed **under subsection (a)(1) or (a)(2) after sentencing having been sentenced** for a prior unrelated felony conviction sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **subsection (a)**, the person has accumulated one (1) prior unrelated felony sex offense conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is ~~one~~ **a conviction** for which the person has been pardoned.

~~(c)~~ **(d)** If the person was convicted of the sex offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony sex offense conviction. ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or had accumulated one (1) prior unrelated conviction for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~

~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 3. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and IC 35-50-2-14, both as amended by this act, apply only to crimes**

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**committed after June 30, 2009."**

and when so amended that said bill do pass.

(Reference is to SB 181 as printed February 13, 2009.)

PIERCE, Chair

Committee Vote: yeas 12, nays 0.

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### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 181 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-41-8-1, AS AMENDED BY P.L.135-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in subsections (d) and (e), a person may not disclose or be compelled to disclose medical or epidemiological information involving a communicable disease or other disease that is a danger to health (as defined under rules adopted under IC 16-41-2-1). This information may not be released or made public upon subpoena or otherwise, except under the following circumstances:

(1) Release may be made of medical or epidemiologic information for statistical purposes if done in a manner that does not identify an individual.

(2) Release may be made of medical or epidemiologic information with the written consent of all individuals identified in the information released.

(3) Release may be made of medical or epidemiologic information to the extent necessary to enforce public health laws, laws described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23, IC 35-38-1-7.1, ~~and~~ IC 35-42-1-7, **IC 35-42-4-1, IC 35-42-4-2, IC 35-42-4-3, IC 35-42-4-5, IC 35-42-4-7, IC 35-42-4-8, IC 35-42-4-9, IC 35-46-1-3, and IC 35-42-2-6**, or to protect the health or life of a named party.

(b) Except as provided in subsection (a), a person responsible for recording, reporting, or maintaining information required to be reported under IC 16-41-2 who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiologic information classified as

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confidential under this section commits a Class A misdemeanor.

(c) In addition to subsection (b), a public employee who violates this section is subject to discharge or other disciplinary action under the personnel rules of the agency that employs the employee.

(d) Release shall be made of the medical records concerning an individual to:

- (1) the individual;
- (2) a person authorized in writing by the individual to receive the medical records; or
- (3) a coroner under IC 36-2-14-21.

(e) An individual may voluntarily disclose information about the individual's communicable disease.

(f) The provisions of this section regarding confidentiality apply to information obtained under IC 16-41-1 through IC 16-41-16."

Renumber all SECTIONS consecutively.

(Reference is to ESB 181 as printed March 27, 2009.)

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